



City of Chicago
Richard M. Daley, Mayor

Department of Law

Mara S. Georges
Corporation Counsel

Revenue Litigation Division
30 North LaSalle Street
Suite 1020
Chicago, Illinois 60602-2580
(312) 744-5691
(312) 744-6798 (FAX)
<http://www.cityofchicago.org>

November 16, 2010

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Re: Opinion Request

Dear Mr. [REDACTED]

I am writing in response to your letter of July 27, 2010 (copy attached). By your letter, you requested that the City of Chicago ("City") issue a ruling on the taxability of application service providers (ASPs).

As noted in Uniform Revenue Procedures Ordinance Ruling #3 ("URPO Ruling #3"), "Whether to issue a private letter ruling in response to a private letter ruling request is within the discretion of the Department." Section 5(f). We have determined that we are not in a position to issue a private letter ruling (PLR) in this case. As also noted in URPO Ruling #3, in lieu of a PLR, "the Department, through the Corporation Counsel's Office, may issue a general information letter ... This letter is a statement of the City's position as to a general area of the law and is not to be considered a private letter ruling." Section 10. In this case, we are in a position to issue a General Information Letter ("GIL").

Chicago Municipal Code ("Code") Chapter 3-32 imposes the Chicago Personal Property Lease Transaction Tax ("PPLTT"). Code Section 3-32-030(A) provides: "Except as otherwise provided in this chapter, a tax is imposed upon: (1) the lease or rental in the city of personal property, or (2) the privilege of using in the city personal property that is leased or rented outside the city." Currently, the rate of the tax is eight percent of the lease or rental price. Code Section 3-32-030(B).

Code Section 3-32-020(I) provides that the term "lease or rental" includes a "nonpossessory lease" and that the term "nonpossessory lease" means "a lease or rental wherein use but not possession of the personal property is transferred and includes, but is not limited to, leased time on or use of any and all personal property not otherwise itself rented, such as leased time on or for the use of addressing machines, billboards, calculators, computers, computer software, copying equipment or data processing equipment, whether the time is fully or partially utilized, and specifically includes a 'nonpossessory computer lease.'"



As you will note, this definition is not limited to the lease of software: it also includes leased time on or use of a computer. See Meites v. City of Chicago, 184 Ill. App.3d 887, 540 N.E.2d 973 (1989). Even assuming that "ASPs are not software," as stated in your letter, this does not mean that they are not subject to the City's PPLTT.

We hope this GIL is of assistance.

Very truly yours,



Weston Hanscom
Deputy Corporation Counsel
Revenue Litigation Division
Department of Law
312-744-9077

cc: Department of Revenue

Handwritten notes: "New York City" and "9/27/10" are visible in the top left corner.

[Redacted]

[Redacted]

July 27, 2010

City of Chicago, Tax Division
Law Department
121 N. LaSalle St.
Chicago, IL 60602

To whom it may concern,

[Redacted] work for [Redacted] which provides indirect tax calculation services for American and international clients. I am currently researching product taxability issues connected with sales and use taxes, and I hope you can help me with a particular question on the taxability of certain transactions.

Specifically, I am researching the tax treatment of application service providers (ASPs) under the Personal Property Lease Transaction Tax (PPLTT). ASPs are entities that deploy, host and manage access to a packaged application. The ASP is maintained on external servers in a centrally managed facility. Multiple parties can access this application through the internet or network on a subscription basis. All the information and code for the ASP is maintained on the servers in the facility; no software is installed or maintained on the subscriber's computer. The subscriber is allowed access to the application and information hosted in the ASP, but cannot access any of the software programming.

According to Municipal Code § 3-32-020(D), computer software is defined, in part, as "data and information that are associated with the hardware of a computer such as a collection of computer programs, routines, compilers, [ect.]." I have also reviewed Personal Property Lease Transaction Tax Ruling # 5, which discusses the taxability of computer software and states that the lease or rental of computer software in the City is subject to lease tax. The ruling says that "to determine whether a lease or rental of software occurs, the test is whether the use or possession of such software is transferred for a consideration." PPLTT Ruling # 5, Section 4. Example (a) describes a situation where a customer leases computer software, installs the software, and pays a monthly rental fee; this transaction is subject to the lease tax because the customer receives and downloads computer software that must be later returned or destroyed. In summary, the PPLTT applies to leases of computer software that is installed onto a computer and interacts with the hardware of a computer.

My concern is that an ASP does not meet the definition of computer software and thus is excluded from the PPLTT. An ASP is not designed to provide data which will cause a computer to act in a certain manner; at no time does the ASP install computer software onto the subscriber's computer. The only interaction with the subscriber's computer is accessing the ASP through an internet web browser. Although Example (a) in PPLTT Ruling # 5 deals with a subscription of computer

[REDACTED]

[REDACTED]

[REDACTED]

software, the customer in the example actually installs the software of the taxpayer and must either return software or delete software at the end of the subscription. A subscriber of an ASP merely loses access to the ASP at the end of the subscription period; there is no physical media to return or software on the user's computer to delete. Therefore, it is doubtful that an ASP is computer software.

Based on the lack of clarity on this issue, I am asking for a ruling on the taxability of ASPs that may be relied upon by our clients. There are no statutory or regulatory provisions that directly apply to this transaction. Furthermore, the current regulations on computer software do not apply to ASPs because ASPs are not software as defined in Municipal Code § 3-32-020(D). I believe that a ruling on the taxability of ASPs is absolutely necessary in order for accurate reporting and remittance of sales tax by a taxpayer.

If there is any other information required by your office in considering this request, I will be happy to provide it. Thank you in advance for your time and assistance, and I look forward to hearing from you.

[REDACTED]

[REDACTED]

Legal Research Analyst - [REDACTED]

[REDACTED]

Phone: [REDACTED]

[REDACTED]